

**Final A-76 Compromise Language for Conference Report on the Transportation,
Treasury and Independent Agencies Appropriations Act**

Sec. 7 _____. (a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE. -- None of the funds appropriated by this or any other Act shall be available to convert to contractor performance an activity or function of an executive agency, on or after the date of enactment of this Act, is performed by more than ten federal employees unless the

- (1) the conversion is based on the result of a public-private competition plan that includes a most efficient and cost effective organization plan developed by such activity or function; and
- (2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the executive agency by an amount that equals or exceeds the lesser of—
 - (A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by federal employees; or
 - (B) \$10,000,000.

(b) Exceptions for the Department of Defense --

- (1) This section and subsections (a), (b), and (c) of section 2461 of title 10, United States Code) do not apply with respect to the performance of a commercial or industrial type function of the Department of Defense that —
 - (A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47);
 - (B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or
 - (C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

- (2) This section shall not apply to depot contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.
- (3) Treatment of Conversion—The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.

(c) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress (instead of the report required by section 642) a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include—

- (1) the total number of competitions completed;
- (2) the total number of competitions announced, together with a list of the activities covered by such competitions;
- (3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;
- (4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;
- (5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;
- (6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;
- (7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;
- (8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that are to be covered by competitions scheduled to be announced in the fiscal year covered by the next report required under this section; and
- (9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.

(d) The head of an executive agency may not be required, under Office of Management and Budget Circular A-76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conducted in accordance with the circular.

(e) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget Circular A-76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.

(f) For the purposes of subchapter V of chapter 35 of title 31, United States Code—

(1) the person designated to represent employees of the Federal Government in a public-private competition regarding the performance of an executive agency activity or function under Office of Management and Budget Circular A-76--

(A) shall be treated as an interested party on behalf of such employees; and

(B) may submit a protest with respect to such public-private competition on behalf of such employees; and

(2) the Comptroller General shall dispose of such a protest in accordance with the policies and procedures applicable to protests described in section 3551(1) of such title under the procurement protest system provided under such subchapter.

(2)The person designated to represent employees of the Federal Government shall be either:

(A) the agency tender official who submitted the agency competition proposal; or

(B) a single individual appointed by a majority of directly affected employees; or

(C) in the event of a dispute between the two individuals cited in (A) or (B) above, either of said individuals, to be determined by the U. S. General Accounting Office.

(g) An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular

A-76 may not be performed by the contractor at a location outside the United States except to the extent that such activity or function was previously been performed by Federal Government employees outside the United States.

(h) In this section, the term 'executive agency' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).